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In re Application of :
OH *et al* :
U.S. Application No.: 10/528,305 :
PCT No.: PCT/JP03/11970 :
Int. Filing Date: 19 September 2003 :
Priority Date: 19 September 2002 :
Docket No.: 114GI-157 :
For: METHOD OF MANUFACTURING A :
BOND MAGNET AND METHOD OF :
MANUFACTURING A MAGNETIC :
DEVICE INCLUDING A BOND :
MAGNET :

DECISION

This decision is in response to the papers filed via facsimile on 16 February 2006 which are treated as a petition under 37 CFR 1.8(b). No fee is required.

BACKGROUND

On 18 July 2005, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that a declaration in compliance with 37 CFR 1.497(a) and (b) and a \$130.00 surcharge fee must be provided. A two-month time period for response was set with extensions of time available pursuant to 37 CFR 1.136(a).

On 20 July 2005, applicants purportedly filed via facsimile a reply to the Form PCT/DO/EO/905 which was accompanied by, *inter alia*, an executed declaration and authorization to charge the required fees to Deposit Account No. 50-2144.

On 16 February 2006, applicants filed the subject petition which was accompanied by, *inter alia*, copies of the documents purportedly filed via facsimile on 20 July 2005 and a copy of the facsimile transmission "Message Confirmation."

DISCUSSION

Applicants claim that a response to the Form PCT/DO/EO/905 mailed 18 July 2005 was filed via facsimile on 20 July 2005. This response included an executed declaration and authorization to charge the required surcharge fee. However, these papers were not located in the file. Moreover, USPTO financial records for the above-captioned application show that the surcharge fee has not been charged.

37 CFR 1.8 *Certificate of mailing or transmission*, states in part:

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

In the subject petition, applicants have provided a copy of the documents purportedly filed 20 July 2005. Applicants also included a copy of the facsimile transmission "Message Confirmation" received on their facsimile machine as proof of responding to the Form PCT/DO/EO/905. Counsel also states that "[i]n accordance with §1.8(b)(3), the undersigned is the person who sent the facsimile transmission of the Response."

This evidence meets the requirements of 37 CFR 1.8(b) and is sufficient for a grantable petition.

CONCLUSION

Applicants' petition under 37 CFR 1.8(b) is **GRANTED**.

The declaration originally filed 20 July 2005 is in compliance with 37 CFR 1.497(a) and (b). No extension fee is required. The surcharge fee of \$130.00 has been charged to Deposit Account 50-2144 as authorized in the 20 July 2005 response.

Applicants have completed the requirements for acceptance under 35 U.S.C.

371(c). The application has an international filing date of 19 September 2003, under 35 U.S.C. 363 and a 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) date of 20 July 2005.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing.



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